

(8) *Previous grantees and borrowers.* If an applicant has not been awarded a grant or loan under this program within the 2 previous Federal fiscal years, 5 points will be awarded.

(9) *Simple payback.* A maximum of 15 points will be awarded for either renewable energy systems or energy efficiency improvements; points will not be awarded for more than one category. In either case, points will be awarded based on the simple payback of the project.

(i) *Renewable energy systems, including flexible fuel pumps.* If the simple payback of the proposed project is:

(A) Less than 10 years, 15 points will be awarded;

(B) 10 years up to but not including 15 years, 10 points will be awarded;

(C) 15 years up to and including 20 years, 5 points will be awarded; or

(D) Longer than 20 years, no points will be awarded.

(ii) *Energy efficiency improvements.* If the simple payback of the proposed project is:

(A) Less than 4 years, 15 points will be awarded;

(B) 4 years up to but not including 8 years, 10 points will be awarded;

(C) 8 years up to and including 12 years, 5 points will be awarded; or

(D) Longer than 12 years, no points will be awarded.

(10) *State Director and Administrator priorities and points.* A State Director, for its State allocation under this subpart, or the Administrator, for making awards from the National Office reserve, may award up to 10 points to an application if the application is for an under-represented technology or for flexible fuel pumps or if selecting the application would help achieve geographic diversity. In no case shall an application receive more than 10 points under this criterion.

§4280.118 Insurance requirements.

Agency approved insurance coverage must be maintained for the life of the RES or EEI grant unless this requirement is waived or modified by the Agency in writing.

(a) National flood insurance is required in accordance with 7 CFR part 1806, subpart B, of this title, if applicable.

(b) Business interruption insurance is required except for projects with total eligible project costs of \$200,000 or less.

§4280.119 Construction planning and performing development.

The requirements of this section apply for planning, designing, bidding, contracting, and constructing renewable energy systems and energy efficiency improvement projects as applicable. For contracts of \$200,000 or less, the simple contract method, as specified in paragraph (e) of this section, may be used. Contracts greater than \$200,000 shall use the contract method specified in paragraph (g) of this section.

(a) *Technical services.* Applicants are responsible for providing the engineering, architectural, and environmental services necessary for planning, designing, bidding, contracting, inspecting, and constructing their facilities. Services may be provided by the applicant's "in-house" engineer or architect or through contract, subject to Agency concurrence. Engineers and architects must be licensed in the State where the facility is to be constructed.

(b) *Design policies.* Facilities funded by the Agency will meet the requirements of §1780.57(b), (c), (d), and (o) of this title. Final plans and specifications must be reviewed by the Agency and approved prior to the start of construction.

(c) *Owners accomplishing work.* In some instances, owners may wish to perform a part of the work themselves. For an owner to perform project development work, the owner must meet the experience requirements of §1780.67 of this title. For an owner to provide a portion of the work, with the remainder to be completed by a contractor, a clear understanding of the division of work must be established and delineated in the contract. In such cases, the contractor will be required to inspect the owner's work and accept it. Owners are not eligible for payment for their own work as it is not an eligible project cost. See §4280.115(c) of this subpart for further details on eligible project costs.

(d) *Equipment purchases.* Equipment purchases of less than \$200,000 will not require a performance and payment

bond, unless required by the applicant, as long as the contract purchase is a lump sum payment and the manufacturer provides the required warranties on the equipment as outlined in paragraph (i) in the applicable section found in Appendices A, B, C, and D of this subpart. Payment shall be certified by copies of the Manufacturer's paid invoices and warranty documents.

(e) *Simple contract method.* The simple contract method may be used for small projects with a contract not greater than \$200,000. In smaller projects, Agency funds will typically be used to reimburse project costs upon completion of the work as a lump sum payment. Partial payments will be made in accordance with Form RD 4280-2 and Form RD 1924-6, "Construction Contract," or other Agency approved contract. All construction work will be performed under a written contract, as described below. A design/build method, where the same person or entity provides design and engineering work, as well as construction or installation, may be used under this method.

(1) *Contracting requirements threshold.* For contracts above \$100,000, certain Federal requirements, including surety, must be met. An attachment to the contract may be used to incorporate language for these requirements.

(2) *Forms used.* Form RD 1924-6 or other Agency approved contract must be used. Other contracts must be approved by the Agency and may be used only if they are customarily used in the area and protect the interest of the applicant and the Government with respect to compliance with items such as the drawings, specifications, payments for work, inspections, completion, non-discrimination in construction work and acceptance of the work. The Agency will not become a party to a construction contract or incur any liability under it. No contract shall become effective until concurred in writing by the Agency. Such concurrence statement shall be attached to and made a part of the contract.

(3) *Contract provisions.* Contracts will have a listing of attachments and the minimum provisions of the contract will include:

(i) The contract sum;

(ii) The dates for starting and completing the work;

(iii) The amount of liquidated damages to be charged;

(iv) The amount, method, and frequency of payment;

(v) Whether or not surety bonds will be provided. If not, a latent defects bond may be required, as described in paragraph (e)(4) of this section;

(vi) The requirement that changes or additions must have prior written approval of the Agency; and

(vii) The warranty period to be provided in accordance with Appendices A and B, sections 1 through 10, paragraph (i)(1) and in Appendices C and D, paragraph (i)(1).

(4) *Surety.* Surety per 7 CFR part 1780, subpart C, §1780.75(c) of this title will be required, and made a part of the contract, if the applicant requests it, or if the contractor requests partial payments for construction work. If the contractor will receive a lump sum payment at the end of work, the Agency will not require surety. In such cases where no surety is provided and the project involves pre-commercial technology, first of its type in the U.S., or new designs without sufficient operating hours to prove their merit, a latent defects bond may be required to cover the work.

(5) *Equal opportunity.* Section 1901.205 of 7 CFR part 1901, subpart E of this title applies to all financial assistance involving construction contracts and subcontracts in excess of \$10,000. Language for this requirement is included in Form RD 1924-6. If this form is not used, such language must be made a part of the Agency approved contract.

(6) *Obtaining bids and selecting a contractor.*

(i) The applicant may select a contractor and negotiate a contract or contact several contractors and request each to submit a bid. The applicant will provide a statement to the Agency describing the process for obtaining the bid(s) and what alternatives were considered.

(ii) When a price has already been negotiated by an applicant and a contractor, the Agency will review the proposed contract. If the contractor is qualified to perform the development and provide a warranty of the work and

the price compares favorably with the cost of similar construction in the area, further negotiation is unnecessary. If the Agency determines the price is too high or otherwise unreasonable, the applicant will be required to negotiate further with the contractor. If a reasonable price cannot be negotiated or if the contractor is not qualified, the applicant will be required to negotiate with another contractor.

(iii) When an applicant has proposed development with no contractor in mind, competition will be required. The applicant must obtain bids from as many qualified contractors, dealers, or trades people as feasible depending on the method and type of construction.

(iv) If the award of the contract is by competitive bidding, Form RD 1924-5, "Invitation for Bid (Construction Contract)," or another similar Agency approved invitation bid form containing the requirements of subpart E of part 1901 of this title may be used. All contractors from whom bids are requested should be informed of all conditions of the contract, including the time and place of opening bids. Conditions shall not be established which would give preference to a specific bidder or type of bidder. When applicable, copies of Forms RD 1924-6 and RD 400-6, "Compliance Statement," also should be provided to the prospective bidders.

(7) *Awarding the contract.* The applicant, with the concurrence of the Agency, will consider the amount of the bids or proposals, and all conditions listed in the invitation. On the basis of these considerations, the applicant will select and notify the lowest responsible bidder. The contract will be awarded using Form RD 1924-6 or similar Agency approved document as described in this section.

(8) *Final payments.* Prior to making final payment on the contract when a surety bond is not used, the Agency will be provided with Form RD 1924-9, "Certificate of Contractor's Release," and Form RD 1924-10, "Release by Claimants," executed by all persons who furnished materials or labor in connection with the contract. The applicant should furnish the contractor with a copy of Form RD 1924-10 at the beginning of the work in order that the

contractor may obtain these releases as the work progresses.

(f) *Design/build contracts.* The design/build method, where the same person or entity provides design and engineering work, as well as construction or installation, may be used with Agency written approval. If the design/build contract amount is \$200,000 or less, development and contracting will follow paragraph (e) of this section. If the design/build contract amount is greater than \$200,000, Agency prior concurrence must be obtained as described below, and the remaining requirements of this section apply.

(1) *Concurrence information.* The applicant will request Agency concurrence by providing the Agency at least the information specified in paragraphs (f)(1)(i) through (f)(1)(viii) of this section.

(i) The owner's written request to use the design/build method with a description of the proposed method.

(ii) A proposed scope of work describing in clear, concise terms the technical requirements for the contract. It should include a nontechnical statement summarizing the work to be performed by the contractor and the results expected, and a proposed construction schedule showing the sequence in which the work is to be performed.

(iii) A proposed firm-fixed-price contract for the entire project which provides that the contractor shall be responsible for any extra cost which may result from errors or omissions in the services provided under the contract, as well as compliance with all Federal, State, and local requirements effective on the contract execution date.

(iv) Where noncompetitive negotiation is proposed, an evaluation of the contractor's performance on previous similar projects in which the contractor acted in a similar capacity.

(v) A detailed listing and cost estimate of equipment and supplies not included in the construction contract but which are necessary to properly operate the facility.

(vi) Evidence that a qualified construction inspector who is independent of the contractor has or will be hired.

(vii) Preliminary plans and outline specifications. However, final plans and

specifications must be completed and reviewed by the Agency prior to the start of construction.

(viii) The owner's attorney's opinion and comments regarding the legal adequacy of the proposed contract documents and evidence that the owner has the legal authority to enter into and fulfill the contract.

(2) *Agency concurrence of design/build method.* The Agency shall review the material submitted by the applicant. When all items are acceptable, the loan approval official will concur in the use of the design/build method for the proposal.

(3) *Forms used.* American Institute of Architects (AIA) contract forms between the owner and design-builder that are approved by the Agency should be used. Other Agency approved contract documents may be used provided they are customarily used in the area and protect the interest of the applicant and the Agency with respect to compliance with items such as the drawings, specifications, payments for work, inspections, completion, non-discrimination in construction work, and acceptance of the work. The Agency will not become a party to a construction contract or incur any liability under it. No contract shall become effective until concurred in writing by the Agency. Such concurrence statement shall be attached to and made a part of the contract.

(4) *Contract provisions.* Contracts will have a listing of attachments and shall meet the following requirements:

- (i) The contract sum;
- (ii) The dates for starting and completing the work;
- (iii) The amount of liquidated damages, if any, to be charged;
- (iv) The amount, method, and frequency of payment;
- (v) Surety provisions that meet the requirements of §1780.75(c) of this title;
- (vi) The requirement that changes or additions must have prior written approval of the Agency;
- (vii) The warranty period to be provided in accordance with Appendices A and B, sections 1 through 10, paragraph (i) and Appendices C and D, paragraph (i);

(viii) Contract review and concurrence in accordance with §1780.61(b) of this title;

(ix) Owner's contractual responsibility in accordance with §1780.68 of this title; and

(x) Further contract provisions concerning remedies, termination, surety, equal employment opportunity, anti-kickback, records, State energy conservation plan, change orders, Agency concurrence, retainage, and other compliance requirements must be met in accordance with 7 CFR part 1780, subpart C, §1780.75 of this title.

(5) *Obtaining bids and selecting a contractor.* The applicant may select a contractor based on competitive sealed bids, competitive negotiation, or non-competitive negotiation as described in §1780.72(b), (c), or (d) of this title.

(g) *Contract method.* If the contract amount is greater than \$200,000 and is not of the design/build method, the following conditions must be met:

(1) *Procurement method.* Procurement method shall comply with the requirements of §§1780.72, 1780.75, and 1780.76 of this title.

(2) *Forms used.* The AIA Form A101, "Standard Form of Agreement Between Owner and Contractor," or Engineering Joint Counsel Document Committee (EJCDC) Form C-521, "Suggested Form of Agreement Between Owner and Contractor (Stipulated Price) Funding Agency Edition," should be used. Other Agency approved contract documents may be used provided they are customarily used in the area and protect the interest of the applicant and the Agency with respect to compliance with items such as the drawings, specifications, payments for work, inspections, completion, non-discrimination in construction work, and acceptance of the work. The Agency will not become a party to a construction contract or incur any liability under it. No contract shall become effective until concurred in writing by the Agency. Such concurrence statement shall be attached to and made a part of the contract.

(3) *Contract provisions.* Contracts will have a listing of attachments and shall meet the requirements of §1780.75 of this title and the following requirements:

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- (i) The contract sum;
 - (ii) The dates for starting and completing the work;
 - (iii) The amount of liquidated damages, if any, to be charged;
 - (iv) The amount, method, and frequency of payment;
 - (v) Surety provisions that meet the requirements of §1780.75(c) of this title;
 - (vi) The requirement that changes or additions must have prior written approval of the Agency;
 - (vii) The warranty period to be provided in accordance with Appendices A and B, sections 1 through 10, paragraph (i) and with Appendices C and D, paragraph (i);
 - (viii) Contract review and concurrence in accordance with §1780.61(b) of this title;
 - (ix) Owner's contractual responsibility in accordance with §1780.68 of this title; and
 - (x) Further contract provisions concerning remedies, termination, surety, equal employment opportunity, anti-kickback, records, State energy conservation plan, change orders, Agency concurrence, retainage, and other compliance requirements must be met in accordance with §1780.75 of this title.
- (4) *Obtaining bids and selecting a contractor.* The applicant may select a contractor based on competitive sealed bids, competitive negotiation, or non-competitive negotiation as described in §1780.72(b), (c), or (d) of this title.
- (5) *Contract award.* Applicants awarding contracts must comply with §1780.70(h) of this title.
- (6) *Contracts awarded prior to applications.* Applicants awarding contracts prior to filing an application must comply with §1780.74 of this title.
- (7) *Contract administration.* Contract administration must comply with §1780.76 of this title. If another authority, such as a Federal or State agency, is providing funding and requires oversight of inspections, change orders, and pay requests, the Agency may accept copies of their reports or forms as meeting oversight requirements of the Agency.

§4280.120 RES and EEI grantee requirements.

- (a) A Letter of Conditions will be prepared by the Agency, establishing con-

ditions that must be understood and agreed to by the applicant before any obligation of funds can occur. The applicant must sign Form RD 1942-46, "Letter of Intent to Meet Conditions" and Form RD 1940-1, "Request for Obligation of Funds," if they accept the conditions of the grant.

(b) The applicant must complete, sign, and return the Form RD 4280-2. The grantee must abide by all requirements contained in Form RD 4280-2, this subpart, and any other applicable Federal statutes or regulations. Failure to follow these requirements may result in termination of the grant and adoption of other available remedies.

(c) Where applicable, the grantee shall provide to the Agency a copy of the executed power purchase agreement within 12 months from the date that the grant agreement is executed, unless otherwise approved by the Agency.

§4280.121 Servicing grants.

(a) *General.* RES and EEI grants will be serviced in accordance with the Departmental Regulations, 7 CFR part 1951, subparts E and O of this title, and Form RD 4280-2.

(b) *Change of contractor or vendor.* After an award has been made, the recipient of the award can request to change a contractor or vendor if the technical merit score for the project remains the same or is higher. Prior to changing a contractor or vendor, the recipient must submit to the Agency a written request providing information that allows the Agency to re-score the project's technical merit. If the Agency determines that the project achieves the same or higher technical merit score, the recipient may make the change. No additional funding will be available from the Agency if costs for the project have increased. If the Agency determines that the project does not achieve the same or higher technical merit score, the change will not be approved.